

ZONING RECLASSIFICATION APPLICATION

Harford County Board of Appeals

Bel Air, Maryland 21014

JUL 23 2007

Shaded Area For Office Use Only

Case No. 170

Date Filed 7/10/07

Hearing Date _____

Pre-Conf. _____

Receipt _____

Fee 1140.00

Note

1. It is required that the applicant have a pre-filing conference with the Department of Planning and Zoning to determine the necessary additional information that will be required.
2. The burden of proof in any rezoning case shall be upon the Petitioner.
3. Any application in a zoning case and any amendment thereto shall contain specific allegations setting forth the basis for granting of the request.
4. Petition must contain names and addresses of all persons having legal or equitable interest in the property, including shareholders owning more than five percent (5%) of the stock in a corporation having any interest in the property, except those corporations listed and traded on a recognized stock exchange.
5. Application will be reviewed for completeness within ten (10) working days of submittal. Applicant will be notified by mail of completeness of application.

Petitioner

Name Evergreen Development, LLC Phone Number Call attorney

Address 11299 Owings Mills Blvd., Suite 200, Owings Mills, MD 21117
Street Number Street State Zip Code

Property Owner See attached Phone Number _____

Address _____
Street Number Street State Zip Code

Contract Purchaser See Attached Phone Number _____

Address _____
Street Number Street State Zip Code

Attorney/Representative John J. Gessner, Esquire Phone Number 410-893-7500

Address 11 South Main Street, P.O. Box 1776, Bel Air, MD 21014
Street Number Street State Zip Code

Land Description

Address and Location of Property (with nearest intersecting road) See Attachment A-1

Subdivision _____ Lot Number _____ Acreage/Lot Size See Att. A-1 Election District 01

Existing Zoning B3 ; R4 Proposed Zoning See Att. A-1 Acreage to be Rezoned see attached

Tax Map No. 56 Grid No. See Att. A-1 Parcel See Att. A-1 Deed Reference see attached

Critical Area Designation N/A Land Use Plan Designation High Intensity

Present Use and ALL improvements: See Attached

Proposed Use (If for subdivision development, proposed number of lots, type of dwellings, and type of development.
Example: Conventional, Conventional with Open Space, Planned Residential Development) _____
Commercial; residential

Is the property designated a historic site, or does the property contain any designated or registered historic structures?
No If yes, describe: _____

Estimated Time Requested to Present Case: one hour

Required Information To Be Attached

(Submit three (3) copies of each):

(a) The names and addresses of all persons, organizations, corporations, or groups owning land, any part of which lies within five hundred (500) feet of the property proposed to be reclassified as shown on the current assessment records of the State Department of Assessments and Taxation.

(b) A statement of the grounds for the application including:

(1) A statement as to whether there is an allegation of mistake as to the existing zoning, and if so, the nature of the mistake and facts relied upon to support this allegation.

(2) A statement as to whether there is an

allegation of substantial change in the character of the neighborhood, and if so, a precise description of such alleged substantial change.

(c) A statement as to whether, in the applicant's opinion, the proposed classification is in conformance with the Master Plan and the reasons for the opinion.

(d) A Concept Plan shall be submitted by the applicant at the time the application is filed. The Concept Plan shall illustrate the following:

(1) Location of site.

(2) Proposed nature and distribution of land uses, not including engineering drawings.

(3) Neighborhood (as defined by the Applicant).

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ATTACHMENT A-1 Parcel descriptions
FOR AMENDED ZONING RECLASSIFICATION APPLICATION
EVERGREEN DEVELOPMENT LLC, PETITIONER


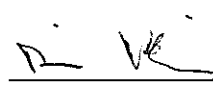
Owner	Evergreen Business Trust	Evergreen Business Trust
Contract Purchaser, if appl	Evergreen Development LLC	Evergreen Development LLC
Address and Location of Property	W S Route 924 Emmorton	2014 Emmorton Rd Bel Air, MD 21015
Nearest Intersecting Road	MD 924 and Plumtree	MD 924
Subdivision	Not applicable	Not applicable
Lot Number	N/A	N/A
Acreage/Lot Size	30.45 ac	3.482 ac
Election District	01	01
Existing Zoning	R-4 and B-3	R-4
Proposed Zoning	B-3	B-3
Acreage to be rezoned	28.098 ac	3.482 ac
Tax Map No.	56	56
Grid No.	2C	2D
Parcel	60	56
Deed Reference	7265/121	7265/121
Critical Area Designation	N/A	N/A
Land Use Plan Designation	High Intensity Community Center	High Intensity Community Center
Present Use and All improvements	Vacant	Vacant
Proposed Use	Commercial	Commercial
Historic Site designation	N/A	N/A

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ATTACHMENT A-2
AMENDED REZONING APPLICATION
EVERGREEN DEVELOPMENT LLC, PETITIONER

Signature of Petitioner/Contract Purchaser:

EVERGREEN DEVELOPMENT, LLC

BY:  11/16/07  11/16/07
Michael F. Klein, DATE Witness (Daniel Klein) DATE
Authorized Person

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ATTACHMENT A-3
FOR ZONING RECLASSIFICATION APPLICATION
EVERGREEN DEVELOPMENT, LLC, PETITIONER

List of Persons Having Legal or Equitable Interest in the Subject Property

PROPERTY OWNER:

Evergreen Business Trust, a Maryland Business Trust

Sole Interest Holder:

The Haron Dahan Foundation, Inc., a Maryland non-stock
corporation
2231 Conowingo Road
Bel Air, MD 21015

CONTRACT PURCHASER:

Evergreen Development LLC
11299 Owings Mill Boulevard
Owings Mills, MD 21117

Members:

1. Michael P. Klein
11299 Owings Mill Boulevard
Owings Mills, MD 21117
2. Philip Klein
11299 Owings Mill Boulevard
Owings Mills, MD 21117

PETITIONER:

Evergreen Development LLC
11299 Owings Mill Boulevard
Owings Mills, MD 21117

MORTGAGEES/ TRUSTEES:

- a. EVERGREEN BUSINESS TRUST PROPERTY

none

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ATTACHMENT A-4
FOR AMENDED ZONING RECLASSIFICATION APPLICATION
EVERGREEN DEVELOPMENT, LLC, PETITIONER

The Zoning Reclassification Application, in Part IV, requests the following information. Petitioner's submission is as follows:

"(a) The names and addresses of all persons, organizations, corporations, or groups owning land, any part of which lies within five (500) feet of the property proposed to be reclassified as shown on the current assessment records of the State Department of Assessments and Taxation."

Petitioner: See attachment A-5, List of Property Owners.

"(b) A statement of the grounds for the application including:

(1) A statement as to whether there is an allegation of mistake as to the existing zoning and, if so, the nature of the mistake and facts relied upon to support this allegation."

Petitioner: Petitioner alleges that a mistake was made as to the existing zoning of the subject property. The subject property ("Subject Property") consists of the property designated as: (i) Tax Map 56, Parcels 56 and 60 on the records of the State Department of Assessments and Taxation ("SDAT") which are both owned by Evergreen Business Trust and under contract with Evergreen Development, LLC.

The 2004 Land Use Plan classifies the Subject Property as High Intensity Community Center. The Subject Property is currently zoned R4, Urban Residential District, and B3, General Business District. Petitioner is requesting that the R4 zoned portion of the Subject Property be rezoned from R4 Urban Residential to B3. Petitioner alleges that a

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mistake in the legal sense was made by the County Council in zoning a portion of the Subject Property R4 for the following reasons:

1. The ownership of the Snodgrass property (Tax Map 56, Parcel 56) changed after 1997. It was purchased by Caddie Homes No. 13, Inc., in May of 2000 after the 1997 comprehensive rezoning was completed and is now owned by Evergreen Business Trust. The County Council could not have known that said parcel and tax map 56, parcel 60 would be in common ownership and suitable for integrated development.
2. It was not known by the County Council in 1997 when the property owned by Harford County and located at the intersection of Patterson Mill Road and Route 924 would be developed as a school. Liquor laws prevent portions of the nearby property owned by 2001 Emmorton Road LLC (Parcel 593 Lot 3) and 1921 Emmorton Road LLC (Parcel 579) ("Turner Property") from being used for permitted B2 uses due to required setbacks from schools for restaurants serving alcohol. Locating a school next to B2 zoned property can create impacts on the school and is inappropriate from a planning standpoint. The county did not zone the Subject Property B3, at least in part, because the Turner Property was zoned B2 and was thought to be able to accommodate all kinds of commercial uses in the area. The County Council would have zoned the Subject Property B3 if it had known that due to the construction of the school, presences of nontidal wetlands and liquor laws, the Turner Property's development for B2 would be restricted.
3. The County Council did not know if or when the dwellings located on the RO zoned lots on Plumtree Road in 1997 which adjoin the Subject Property would be demolished. The dwellings have, in fact, been demolished and those lots will be used for commercial uses permitted in the RO zone. Such commercial uses will have an adverse impact on permitted uses in the R4 district which can be developed on the R4 zoned portion of the Subject Property. If the County Council had known that, it would not have zoned the Subject Property R4 in 1997.
4. Road improvements to Route 924 have taken place since 1997. Traffic signals at the intersections of Plumtree Road and Route 924 and Patterson Mill Road and Route 924 have been installed since 1997. It was anticipated in 1997 at the time of the last comprehensive rezoning that Tollgate Road and Route 924 would carry equal traffic volumes. It was impossible for the County Council to predict in 1997 when construction of that portion of Tollgate Road across property south of Route 24 also owned by Evergreen Business Trust (Tax Map 56, Parcel 591) would be completed. Construction of that portion of Tollgate Road is still not

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complete. As a result of improvements to Route 924, and the failure to complete construction of Tollgate Road, Tollgate Road and Route 924 do not carry equal amounts of traffic. Route 924 carries more traffic than Tollgate Road. The County Council could not have anticipated these developments in 1997. If it had, it would have oriented commercially zoned property between Route 24 and Route 924 and would not have zoned tax map 56, parcel 60 and 56, R4. Tax map 56, parcels 56 and 60 are the "hole in the doughnut" i.e., residentially zoned property surrounded by traffic impacts caused by Route 924 and Route 24.

5. The 1996 Legg Mason inventory of commercially zoned land, which indicates there is enough commercially zoned land County wide, was not designed to apply to rezoning in submarkets on a property by property or census tract basis. The market and population in Harford County have dramatically changed since 1997. Assumptions regarding demographics, income levels, etc., for Harford County residents contained in the Legg Mason study and relied upon by the County Council in 1997 have changed due to inevitable impacts from the "BRAC" process and other considerations. New kinds of commercial development are now needed as is commercially zoned land to accommodate this development. The County Council was unaware of this in 1997. Had it known this, it would not have zoned the Subject Property R4 in 1997.
6. The County Council was mistaken that vacant land, zoned commercial, (the Turner Property) was available for commercial development in the vicinity of the Subject Property such that there was no need to rezone the portion of the Subject Property zoned R4 to B3 in 1997. The Subject Property is far better suited for commercial development than residential development. The County Council failed to consider these facts in zoning the Subject Property R4 in 1997.

"(2) A statement as to whether there is an allegation of substantial change in the character of the neighborhood, and if so, a precise description of such alleged substantial change."

Petitioner: N/A.

"(c) A statement as to whether, in the applicant's opinion, the proposed classification is in conformance with the Master Plan and the reasons for the opinion."

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Petitioner: The Subject Property is classified as "High Intensity – Community Center" on the 2004 Master Plan. The proposed B3, General Business Zoning, for the Subject Property is consistent with that classification.

"(d) A Concept Plan shall be submitted by the applicant at the time the application is filed. The Concept Plan shall illustrate the following: (1) Location of site; (2) Proposed nature and distribution of land uses, not including engineering drawings; (3) Neighborhood (as defined by the Applicant); (4) All surrounding zoning; (5) Proposed public or private capital improvements.

Petitioner: See Attachment A-6.1, entitled "Rezoning Concept Plan for the Evergreen Farms/Park Avenue at Bel Air" dated May 18, 2007, prepared by Morris & Ritchie Associates, Inc. and Attachment A-6.2, an 8.5 x 17" color coded version, also entitled "Rezoning Concept Plan for the Evergreen Farms/Park Avenue at Bel Air" dated May 18, 2007, prepared by Morris & Ritchie Associates, Inc.

"(e) Previous individual rezonings and recommendation since the effective date of the 1997 Comprehensive Rezoning, within the neighborhood of the petitioned area, their case numbers, dates, and decisions."

Petitioner: N/A

"(f) Environmental Features Map indicating woods, fields, streams, flood plains, non-tidal wetlands, etc."

Petitioner: See Attachment A-7.1, entitled "Environmental Features Map for the Evergreen Farms/Park Avenue at Bel Air" dated May 18, 2007, prepared by Morris & Ritchie Associates, Inc. and Attachment A-7.2, an 8.5 x 17" color-coded version, also

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entitled "Environmental Features Map for the Evergreen Farms/Park Avenue at Bel Air"
dated May 18, 2007, prepared by Morris & Ritchie Associates, Inc.

"(g) Property deed and boundary survey prepared and sealed by a
registered surveyor, including dimension of area requested to be rezoned if only a portion of
the property."

Petitioner: See Attachment A-8, title deed.

"(h) Private restrictions or covenants, if any, applicable to subject parcel."

Petitioner: None.

"(i) Any agreements with individuals or associations in the
neighborhood related to the proposed zoning shall be submitted.

Petitioner: None

"(j) Availability of public water and sewer."

Petitioner: Public water and sewer are available.

DAVID R. CRAIG
HARFORD COUNTY EXECUTIVE

LORRAINE COSTELLO
DIRECTOR OF ADMINISTRATION



C. PETE GUTWALD
DIRECTOR OF PLANNING & ZONING

HARFORD COUNTY GOVERNMENT

Department of Planning and Zoning

December 6, 2007

AMENDED STAFF REPORT

BOARD OF APPEALS CASE NO. 170

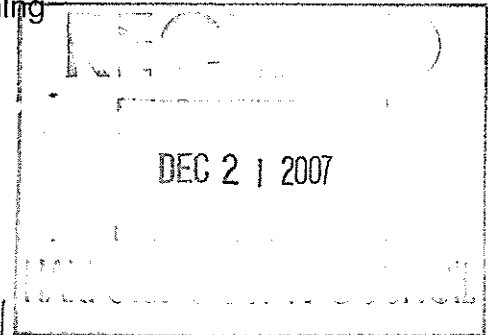
APPLICANT/OWNER: Evergreen Business Trust
2231 Conowingo Road
Bel Air, MD 21015

CONTRACT/PURCHASER: Evergreen Development, LLC
11299 Owings Mills Blvd., Suite 200
Owings Mills, MD 21117

REPRESENTATIVE: John J. Gessner, Esquire
Gessner, Snee, Mahoney and Lutche, PA,
11 South Main Street, PO Box 1776,
Bel Air, Maryland 21014

DATE FILED: July 10, 2007

HEARING DATE: January 7, 2007



"THE EVERGREEN BUSINESS TRUST PROPERTY"

PARCEL 60

OWNER: Evergreen Business Trust
2231 Conowingo Road
Bel Air, MD 21015

LOCATION: South side of Plumtree Road between MD Route 924 and
MD Route 24
Tax Map: 56 / Grid: 2C / Parcel: 60
Election District: First (1)

ACREAGE: 30.45 acres

Preserving Harford's past; promoting Harford's future

MY DIRECT PHONE NUMBER IS (410) 638-3103

220 SOUTH MAIN STREET BEL AIR, MARYLAND 21014 410.638.3000 • 410.879.2000 • TTY 410.638.3086 • www.harfordcountymd.gov

THIS DOCUMENT IS AVAILABLE IN ALTERNATIVE FORMAT UPON REQUEST.

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ACREAGE TO BE REZONED: 28.098 acres

EXISTING ZONING: R4/Urban Residential District and B3/General Business District

PROPOSED ZONING: B3/General Business District

PARCEL 56

OWNER: Evergreen Business Trust
2231 Conowingo Road
Bel Air, MD 21015

LOCATION: West side of MD Route 924 south of Plumtree Road
Tax Map: 56 / Grid: 2D / Parcel: 56
Election District: First (1)

ACREAGE: 3.482 acres

ACREAGE TO BE REZONED: 3.482 acres

EXISTING ZONING: R4/Urban Residential District

PROPOSED ZONING: B3/General Business District

APPLICANT'S REQUEST and JUSTIFICATION:

See ATTACHMENT 1.

LAND USE and ZONING ANALYSIS:

Location and Description of Neighborhood:

The properties that are the subject of this Application are generally located on the south side of Plumtree Road between MD Route 924 and MD Route 24. A location map and a copy of the Applicant's site plan are enclosed with the report (Attachments 2, 3A and 3B).

The Applicant has submitted a map delineating their suggested neighborhood with the Application (Attachment 4). The Department disagrees with the neighborhood defined by the Applicant. The Department defines the neighborhood as all those properties east of Tollgate Road, south of Ring Factory Road, north of Wheel Road, and west of Bynum Run. Enclosed with this report is a map showing the neighborhood as defined by the Department (Attachment 5).

Land Use – Master Plan:

The subject properties are located within the Development Envelope on the south side of Plumtree Road between MD Route 24 and MD Route 924. The predominant land use designations in this area of the County are Medium and High Intensity. The subject properties are located within the Bel Air South Community Center. The Natural Features Map reflects Stream Systems. The subject properties are designated as High Intensity which is defined by the 2004 Master Plan as:

***High Intensity** – Areas within the Development Envelope where residential development occurs at a density greater than 7.0 dwelling units per acre. Major retail commercial centers and highway-related businesses, such as automobile dealerships and home improvement centers, are examples of some of the most intensive uses associated with this designation.*

***Community Centers** - Areas combining civic, social, and cultural facilities with more intensive commercial and service oriented activities. These centers are usually located along major highways.*

Enclosed with the report are copies of the 2004 Land Use Map and the Natural Features Map (Attachments 6 and 7).

Land Use – Existing:

The existing land uses in the area generally conform to the intent of the Master Plan. The area contains a mix of residential uses including single-family dwellings, townhouses, condominiums, and assisted living facilities. The area also contains institutional uses as well as a variety of commercial uses. Most of the commercial uses are located within shopping centers such as the Festival Shopping Center, Bel Air South Commercial, Bright Oaks Commercial and Emmorton Square. Commercial uses include a grocery store, gas stations, convenience stores, professional services, personal services, retail, specialty retail, restaurants, offices, veterinary practice and medical/dental offices. Institutional uses in the area include Ring Factory Elementary School, Patterson Mill Middle and High School, churches, and a County Recreation Center.

Parcel 60

Parcel 60 is irregularly shaped and contains 30.45 acres. Parcel 60 has frontage on Plumtree Road, Blue Spruce Drive, MD Route 924, and MD Route 24. It is important to note that MD Route 24 is a denied access highway. The topography of Parcel 60 is gently sloping from the north to the south. Parcel 60 was actively farmed prior to 1990 and the crop and pasture land have been allowed to naturally regenerate since the farming operation ceased. Enclosed with the report are a copy of the topography map, aerial photograph, and site photographs (Attachments 8A - C).

A Planned Residential Development (PRD) for 462 garden apartment units was previously approved by the Board of Appeals in 1992 under Case No. 4214 for Parcel 60. A Preliminary Plan (P76/92-3) was subsequently submitted for the apartment units and the creation of two commercial lots. The Preliminary Plan was also approved in 1992 (Attachment 9). No residential or commercial development has commenced on Parcel 60.

Parcel 56

Parcel 56 is rectangular in shape, contains 3.482 acres and has approximately 215-feet of frontage along MD Route 924. Parcel 56 was previously improved with a single-family dwelling and barn. It appears that these structures were demolished in 2003. The topography of Parcel 56 is gently sloping from the west to the east. The majority of Parcel 56 is open field with scattered trees and shrubs. Enclosed with the report are a copy of the topography map, aerial photograph, and site photographs (Attachments 10A - C).

Zoning and Zoning History:

Zoning:

The zoning classifications in the area are consistent with the 2004 Master Plan as well as the existing land uses. Residential zoning in the area includes R1, R2, R3 and R4/Urban Residential Districts. Commercial zoning in the area includes B1/Neighborhood Business District, B2/Community Business District, B3/General Business District and CI/Commercial Industrial District. There are also several parcels zoned RO/Residential Office District on the north and south side of Plumtree Road. Enclosed with the report is a zoning map showing the existing zoning of the subject properties (Attachment 11).

Zoning History:

Parcel 60

1957 Comprehensive Zoning Review: In 1957 the subject property was split zoned AG/Agricultural District and B3/General Business District. In 1979, a portion of the subject property was rezoned R2 and R3/Urban Residential Districts. Enclosed with the report is a copy of the 1957 Zoning Map and 1979 Issue Log (Attachment 12 and 13).

1982 Comprehensive Zoning Review: During the 1982 Comprehensive Zoning Review the R2 and R3/Urban Residential Districts and AG/Agricultural District zoned portions of the subject property were rezoned to R4/Urban Residential District. The B3/General Business District zoning was retained and reconfigured at the northeast corner of the subject property at the intersection of Plumtree Road and MD Route 924 (Attachment 14).

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1989 Comprehensive Zoning Review: The owners of the subject property in 1989 requested that 9.60 acres of the property be rezoned to include CI/Commercial Industrial District zoning and expand the existing B3/General Business District zoning. It is unclear from the Zoning Issue Map which areas of Parcel 60 that the owners were requesting to be rezoned to CI/Commercial Industrial District. The County Council did not adopt the request and the subject property remained split zoned R4/Urban Residential District and B3/General Business District. Enclosed with the report are the Zoning Issue Log, Zoning Issue Map, and 1989 Zoning Map (Attachments 15, 16, and 17).

1997 Comprehensive Zoning Review: The owners of the subject property in 1997 requested that 46.545 acres of the property be rezoned to B3/General Business District from R3 and R4/Urban Residential Districts. It is important to note that this request also included the portion of Parcel 60 that was located on the west side of MD Route 24. As previously stated, the portion of the subject property located on the west side of MD Route 24 is no longer part of Parcel 60 and is not a subject of this rezoning request. The County Council did not adopt the request and the subject property remained split zoned R4/Urban Residential District and B3/General Business District. Enclosed with the report are the Zoning Issue Log, Zoning Issue Map, and 1997 Zoning Map (Attachments 18, 19, and 20).

2005 Comprehensive Zoning Review: The owners of the subject property requested that the entire property be rezoned to B3/General Business District during the 2005 review. The County Council voted to change the entire property to B3/General Business District. However, the County Executive vetoed the Legislation and the County Council did not override the veto. Therefore, the zoning assigned to the property in 1997 remains in effect. Attached are copies of the 2005 Zoning Issue Log and Zoning Issue Map (Attachment 21 and 22).

Parcel 56

1957 Comprehensive Zoning Review: In 1957 the subject property was split zoned AG/Agricultural District and B3/General Business District (Attachment 23).

1982 Comprehensive Zoning Review: During the 1982 Comprehensive Zoning Review the subject property was rezoned to R3/Urban Residential District from AG/Agricultural District and B3/General Business District (Attachment 24).

1989 Comprehensive Zoning Review: The owners of the subject property in 1989 requested that the property be rezoned to R4/Urban Residential District from R3/Urban Residential District. The County Council adopted the request and the subject property was zoned R4/Urban Residential District. Enclosed with the report are the Zoning Issue Log, Zoning Issue Map, and 1989 Zoning Map (Attachments 25, 26, and 27).

1997 Comprehensive Zoning Review: The owners of the subject property in 1997 requested that the property be rezoned to B3/General Business District from R4/Urban Residential District. The County Council did not adopt the request and the subject property remained zoned R4/Urban Residential District. Enclosed with the report are the Zoning Issue Log, Zoning Issue Map, and 1997 Zoning Map (Attachments 28, 29, and 30).

2005 Comprehensive Zoning Review: The Applicant requested that the subject property be rezoned to B3/General Business District during the 2005 review. The County Council voted to change the property to B3/General Business District. However, the County Executive vetoed the Legislation and the County Council did not override the veto. Therefore, the zoning assigned to the property in 1997 remains in effect. Attached are copies of the 2005 zoning log and issues map (Attachment 31 and 32).

BASIS FOR INDIVIDUAL REZONING REQUEST:

Under Maryland case law, the burden of proof lies with the Applicant to provide information that there has been a substantial change in the overall character of the neighborhood or that the County made a mistake during the last comprehensive zoning review process. It should be noted that the courts have stated that any argument for change cannot be based on existing changes that were anticipated during the last comprehensive review.

Substantial Change Argument:

The Applicants are not claiming that a substantial change in the neighborhood has occurred. The Department would agree that a substantial change in the neighborhood has not occurred since 1997.

Mistake:

The Applicant states that, "Petitioner alleges that a mistake was made as to the existing zoning of the subject property. The subject property ("Subject Property") consists of the property designated as: (i) Tax Map 56, Parcels 56 and 60 on the records of the State Department of Assessments and Taxation ("SDAT") which are both owned by Evergreen Business Trust and under contract with Evergreen Development, LLC."

"The 2004 Land Use Plan classifies the Subject Property as High Intensity Community Center. The Subject Property is currently zoned R4, Urban Residential District, and B3, General Business District. Petitioner is requesting that the R4 zoned portion of the Subject Property be rezoned from R4 Urban Residential District to B3. Petitioner alleges that a mistake in the legal sense was made by the County Council in zoning a portion of the Subject Property R4 for the following reasons:

1. The ownership of the Snodgrass property (Tax Map 56, Parcel 56) changed after 1997. It was purchased by Caddie Homes No. 13, Inc., in May of 2000 after the 1997

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comprehensive rezoning was completed and is now owned by Evergreen Business Trust. The County Council could not have known that parcel and tax map 56, parcel 60 would be in common ownership and suitable for integrated development.

2. It was not known by the County Council in 1997 when the property owned by Harford County and located at the intersection of Patterson Mill Road and Route 924 would be developed as a school. Liquor laws prevent portions of the nearby property owned by 2001 Emmorton Road LLC (Parcel 593 Lot 3) and 1921 Emmorton Road LLC (Parcel 579) ("Turner Property") from being used for permitted B2 uses due to required setbacks from schools for restaurants serving alcohol. Locating a school next to B2 zoned property can create impacts on the school and is inappropriate from a planning standpoint. The county did not zone the Subject Property B3, at least in part, because the Turner Property was zoned B2 and was thought to be able to accommodate all kinds of commercial uses in the area. The County Council would have zoned the Subject Property B3 if it had known that due to the construction of the school, presences of nontidal wetlands and liquor laws, the Turner Property's development for B2 would be restricted.
3. The County Council did not know if or when the dwellings located on the RO zoned lots on Plumtree Road in 1997 which adjoin the Subject Property would be demolished. The dwellings have, in fact, been demolished and those lots will be used for commercial uses permitted in the RO zone. Such commercial uses will have an adverse impact on permitted uses in the R4 district which can be developed on the R4 zoned portion of the Subject Property. If the County Council had known that, it would not have zoned the Evergreen Business Trust Property R4 in 1997.
4. Road improvements to Route 924 have taken place since 1997. Traffic signals at the intersections of Plumtree Road and Route 924 and Patterson Mill Road and Route 924 have been installed since 1997. It was anticipated in 1997 at the time of the last Comprehensive Rezoning that Tollgate Road and Route 924 would carry equal traffic volumes. It was impossible for the County Council to predict in 1997 when the construction of that portion of Tollgate Road across property south of Route 24 also owned by Evergreen Business Trust (Tax Map 56, Parcel 591) would be completed. Construction of that portion of Tollgate Road is still not complete. As a result of improvements to Route 924, Tollgate Road and Route 924 do not carry equal amounts of traffic. Route 924 carries more traffic than Tollgate Road. The County Council could not have anticipated these developments in 1997. If it had, it would have oriented commercially zoned property between Route 24 and Route 924 and would not have zoned tax map 56, parcel 60 and 56, R4. Tax map 56, parcels 56 and 60 are the "hole in the doughnut" i.e., residentially zoned property surrounded by traffic impacts caused by Route 924 and Route 24.
5. The 1996 Legg Mason inventory of commercially zoned land, which indicates there is enough commercially zoned land County wide, was not designed to apply to

AMENDED STAFF REPORT

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Evergreen Development, LLC

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rezoning in submarkets on a property by property or census tract basis. The market and population in Harford County have dramatically changed since 1997. Assumptions regarding demographics, income levels, etc., for Harford County residents contained in the Legg Mason study and relied upon by the County Council in 1997 have changed due to inevitable impacts from the "BRAC" process and other considerations. New kinds of commercial development are now needed as is commercially zoned land to accommodate this development. The County Council was unaware of this in 1997. Had it known this, it would not have zoned the Evergreen Business Trust Property R4 in 1997.

6. The County Council was mistaken that vacant land, zoned commercial, (the Turner Property) was available for development in the vicinity of the Subject Property such that there was no need to rezone the portion of the Subject Property zoned R4 to B3 in 1997. The Subject Property is far better suited for commercial development than residential development. The County Council failed to consider these facts in zoning the Subject Property R4 in 1997."

The Applicant is requesting rezoning of the R4/Urban Residential District portion of the Evergreen Business Trust Property to B3/General Business District. The Department disagrees with the Applicant that a mistake has occurred in the zoning of the subject properties. The current R4/Urban Residential District zoning is consistent with the 2004 Master Plan. The County acquired the property along Patterson Mill Road for a school prior to 1997. Schools are permitted in all zoning districts except for the MO and GI districts.

ANALYSIS OF INDIVIDUAL ZONING REQUEST:

Conformance with the Master Plan and Land Use Element Plan:

The proposed rezoning is in conformance with the intent of the 2004 Master Plan. The Land Use Plan shows the area designated as High Intensity and within a Community Center.

Impact of Requested Zoning:

The requested rezoning would not adversely impact the neighborhood.

COMMENTS FROM ADVISORY GROUPS:

Historic Preservation Issues:

There are no historic sites on the subject properties. No preservation easements impact the property.

Planning Advisory Board:

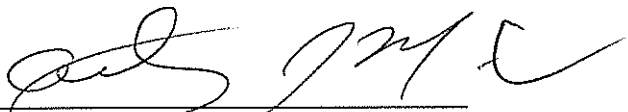
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The Planning Advisory Board (PAB) reviewed the request at their meeting on December 12, 2007. The PAB voted 5-0 to recommend that the requested change in zoning be denied (Attachment 33).

RECOMMENDATION and or SUGGESTED CONDITIONS:

The Department of Planning and Zoning recommends that the request to rezone the entire Evergreen Business Trust Property to B3/General Business District be denied.



Shane Grimm, AICP
Chief, Site Plan & Building
Permits Review

Anthony S. McClune, AICP
Deputy Director, Planning and Zoning

SPG/ASM/jf